am rather disposed, with Mr. Justice Washington, (in *Watson* v. *Bladen*, 4 Washington, R., 583,) to doubt whether the assumption is correct, that in such cases there is no damage, yet, if the assumption be correct, I think the inference is sound that no action lies.

It is true, some of the patent acts, which were repealed by the act of 1836, gave an action for a sale, if made without the consent, *in writing*, of the patentee or his assigns. But the law now in force contains no such provision, and if it did, I should still be of the opinion that a sale to the patentee himself was not such a sale as was intended by the statute; that no sale was within its meaning, except one which would be within the terms of the grant contained in the letters patent, which is a grant of an exclusive right to make, use, and *vend to others*, to be used. In this case I am of opinion that the sale to the plaintiffs' agent, was a sale to them, and that such a sale is not per se an infringement. On a statement of facts, as I am not at liberty to draw any inferences, and the judgment must be for the defendants. Judgment for defendants.

Circuit Court of the United States for the Third Circuit.

CECIL OLIVER, ET AL. VS. DANIEL KAUFFMAN, STEPHEN WAKEFIELD, AND PHILIP BRECKBILL.

1. Though the penalty given by the 4th section of the Act of 1793, with regard to Fugitives from Labor, is repealed by the act of 1850, the reservation of the right of action by the owners of such fugitives, for the injuries enumerated therein, is not affected.
2. "Notice" under the Act means *knowledge;* it is not necessary that a specific written, or verbal notice, from the owner of fugitive slaves, should be brought home to the defendant, in an action for "harboring and concealing," in order to make him liable.
3. "Harboring," within the act, is not synonymous with "concealment," but consists in any entertainment or shelter for an unlawful purpose. Mere acts of charity, however, will not constitute the offence.
4. In order to enable a plaintiff to recover in an action for "harboring and concealing" fugitive slaves, he must prove that the slaves were pursued by himself or his agent, for the purpose of reclamation; and that the defendant, knowing

them to be fugitives, harbored or concealed them in order to further their escape, and to enable them to elude pursuit.

5. Where, in such action, it is shown that in consequence of the harboring and concealment, the slaves escaped, and were lost to their owner, the measure of damages is the value of the slaves, with interest, if the jury think fit; otherwise, however, if the interference of the defendant was only after the plaintiff had abandoned all pursuit of his slaves.
6. In such action, the plaintiff is entitled to recover entire damages against all engaged in furthering the escape and in frustrating his pursuit.
7. Possession of slaves, otherwise shown to be such, is *prima facie* proof of title, and no formal bill of sale is necessary to establish ownership.
8. In an action for "harboring and concealing," under the Act of 1793, it appeared that the owner of the slaves, in carrying them from Arkansas to Maryland, from which State they afterwards escaped, had passed with them on the National Road over the State of Pennsylvania; but that, on their arrival in Maryland, they had been duly registered, according to law, as slaves, *held*, that such transit had not rendered them free, but that their *status* was to be determined by the law of Maryland.

This was an action on the case for the harboring and concealment of certain fugitive slaves, the property of the plaintiffs, whereby they escaped and became lost to them, brought under the fourth section of the Act of Congress of Feb. 12th, 1793. The suit had been originally begun in one of the courts of Pennsylvania, and a verdict recovered, but the Superior Court, on error, held, reversing the judgment, that no action lay at common law for the injury complained of, and it was therefore recommenced here. (See *Kauffman* v. *Oliver*, 10 Barr, 514.)

On the trial of the case, the material facts developed were briefly as follows:

The plaintiffs were the minor children of Shadrach S. Oliver, a citizen of Arkansas, who died in 1846, leaving the slaves in question, and other property. His widow took out letters of administration; and, there being no debts, an amicable division of the estate was made, by which the slaves fell to the share of the plaintiffs. In the early part of 1847 Mrs. Oliver and her children removed to Maryland, carrying the slaves with them. In their journey, after taking the usual route up the Ohio, they passed in stages on the National Road across the State of Pennsylvania, stopping at

Uniontown to get food, but making, otherwise, no pause. On their arrival in Maryland, the slaves were duly registered at Hagerstown, in that State, under a statute making registry necessary under the circumstances.

In October, 1847, thirteen of the slaves escaped into Pennsylvania. Immediate pursuit was begun, and after a few days, some information was obtained, by which the slaves were traced to the barn of Kauffman, one of the defendants, near Shippensburg. The agent of the plaintiffs proceeded there at once, but was unsuccessful in his attempt to recover them; and, after other efforts, was obliged to give up his search as fruitless. Witnesses were introduced on the part of the plaintiff, to prove that the slaves had been actually received and concealed by Kauffman, with knowledge of their condition; and that he and the other defendants were engaged in procuring their escape. This was met, however, by contradictory testimony on the part of the defence; and on all the principal points in the case the evidence was entirely conflicting.

The Act of Assembly of Pennsylvania of 1847, § 7, which was in force at the time of the transit of the Oliver family, with the slaves, across the State, repeals so much of the Act of 1780 "as authorizes the masters or owners of slaves *to bring and retain* such slaves within the Commonwealth, for the period of six months, in involuntary servitude, or for any *period of time whatsoever.*" It was urged, amongst other grounds of defence, that, under this act the voluntary taking of the slaves through Pennsylvania rendered them free.

In the course of the argument, allusion was made, on both sides, to the late trials in this Court for treason, arising out of the riot and homicide at Christiana; and the Report of the Attorney General of Maryland, made to the Executive of that State.

The case was argued by

H. M. Watts and *C. B. Penrose*, for Plaintiffs.

W. B. Reed and *D. P. Brown*, for Defendants.

The charge to the jury was delivered by GRIER J. (after stating the facts and pleadings.)

In the performance of your duty on this subject, it will be proper that you suffer no prejudice to affect your minds, either for or against either of the parties to this suit. The odium attached to the name of "abolitionist" (whether justly or unjustly, it matters not), should not be suffered to supply any want of proof of the guilty participation of the defendants in the offence charged, even if the testimony in the case should satisfy you that the defendants entertained the sentiments avowed by the class of persons designated by that name. The defendants are on trial for their *acts*, not for their *opinions*. Beware, also, that the occasional insolence and violent denunciation of the South be not permitted to prejudice your minds against the just rights guaranteed to them by the Constitution and laws of the Union. An unfortunate occurrence has taken place since the former trial of this case, which, as it is a matter of public history, and as such has been introduced into the argument of this case, it becomes the unpleasant duty of the Court to notice in connection with this portion of our remarks. A worthy citizen of Maryland, in attempting to recapture a fugitive, was basely murdered by a mob of negroes on the southern borders of our State. That such an occurrence should have excited a deep feeling of resentment in the people of that State, was no more than might have justly been expected. That this outrage was the legitimate result of the seditious and treasonable doctrines diligently taught by a few vagrant and insane fanatics, may be admitted. But by the great body of the people of Pennsylvania, the occurrence was sincerely regretted, and an anxious desire was entertained that the perpetrators of this murder should be brought to condign punishment. Measures were taken, even at the expense of sending a large constabulary and military force into the neighborhood, to arrest every person, black and white, on whom rested the least suspicion of participation in the offence. A large number of bills of indictment were found against the persons arrested for high treason, and one of them was tried in this Court. The trial was conducted by the Attorney General of the State of Maryland; and although it was abundantly evident that a riot and murder had been committed, by some persons, the prosecution wholly failed in

proving the defendant, on trial, guilty of the crime of treason with which he was charged. But, however much it was to be regretted that the perpetrators of this gross offence could not be brought to punishment, the Court and jury could not condemn, without proof, any individual, to appease the justly offended feelings of the people of Maryland. Unfortunately, a different opinion with regard to our duty in this matter, seems to have been entertained by persons holding high official stations in that State; and certain official statements have been published, reflecting injuriously upon the people of Pennsylvania and this Court, which have tended to excite feelings of resentment, and to keep up a border feud, which, if suffered to have effect in our Courts, or in the jury-box, may tend to prejudice the just rights of the people of Maryland, and of the plaintiffs in this case. These offensive documents, I have reason to believe, are neither a correct exhibition of the good sense and feelings of the people of that State, nor of the legal knowledge and capacity of its learned and eminent bar. It would do them great wrong to suppose them incapable of understanding the legal proceedings, which have been made the subject of so much reprehension, or capable of misrepresenting them.

It is your duty to treat with utter disregard ignorant and malicious vituperation of fanatics and demagogues, whether it come from North or South, and give to the respective parties such protection of their respective rights as the Constitution and the laws of our country secure to them.

I have urged these considerations on your attention more at length, because they have been the subject of much comment by counsel.

The foundation of the legal rights now asserted on behalf of the plaintiffs, is found in the Constitution of the United States.

The provision of the Constitution (Art. 4th, § 3) is as follows:

"No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation thereof, be discharged from such labor or service, but shall be delivered up 'on claim of the party to whom such service or labor may be due.' It declares, also (Art. 6, § 2), "That this

Constitution and the laws of the United States, made in pursuance thereof, shall be the supreme law of the land, and the judges of every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

By virtue of this clause in the Constitution, the master might have pursued and arrested his fugitive slave in another State; he might use as much force as was necessary for his reclamation; he might bind and secure him so as to prevent a second escape. But as the exercise of such a power, without some evidence of legal authority, might lead to oppression and outrage, and the master, in the exercise of his legal rights, might be obstructed and hindered, it became necessary for Congress to establish some mode by which the master might have the form and support of legal process, and persons guilty of improper interference with his rights might be punished. For this purpose the Act of Congress of 12th Feb., 1793, was passed. By the 3d Sec. of this Act, the master or his agent is empowered to seize and arrest the fugitive, and take him before a Judge or Magistrate, and, having proofs of his ownership, obtain a certificate, which should serve as a legal warrant for removing the fugitive.

The 4th Sec. describes four different offences—1st, knowingly and wilfully obstructing the claimant in seizing or arresting the fugitive; 2d, rescuing the fugitive when so arrested; 3d, harboring; 4th, concealing such person after notice that he is a fugitive from labor.

Under this statute you will observe that a penalty of five hundred dollars is incurred for harboring or concealing a fugitive, which the party injured may recover; but the present action is not for this penalty. In this suit, the plaintiff is only entitled to recover the damages he has actually sustained by the acts of the defendants. You will first determine whether the proof, under the principles here laid down, entitles the plaintiff to recover. And if they be so entitled, you will then have to consider the amount of damages.

In order to entitle the plaintiffs to your verdict, they must have proved to your satisfaction:

1. That the slaves or persons held to labor, mentioned in the

declaration, or some of them, were, by the laws of Maryland, the property of the plaintiffs—or, as the statute expresses it, that their labor and services were due to the plaintiffs for life, or a term of years.

2. That these persons so held to labor escaped to the State of Pennsylvania.

3. That the defendants, or some of them, aware of these facts, (having notice or knowledge that the persons harbored or concealed were fugitives from labor), did harbor or conceal them, contrary to the true intent and meaning of the statute.

4. And if you find these facts in favor of the plaintiffs, the amount of the damage, injury, or loss, sustained by the plaintiffs in consequence of such harboring and concealing.

On the first two points, there is no contradictory testimony. But while the escape of the twelve negroes has not been disputed, the defendants' counsel contend that the facts, as proved, do not show that the fugitives were slaves, or the property of the plaintiffs, but on the contrary that they were free.

It has not been disputed that the fugitives were the property of Shadrach S. Oliver at the time of his death in Arkansas. By the laws of that State, the widow has a right to a third of them, if treated either as real or personal estate. But, however the law might divide them, the widow and children, as entitled to the succession, after the payment of debts, could, by any family arrangement, settlement, or understanding, divide the property at their own discretion, and third persons would have no right to dispute its validity. Slaves, though for some purposes treated as real property, are chattels, and like other chattels may pass by delivery, without any formal bill of sale. Possession of them is therefore *prima facie* evidence of title.

It has been contended that these slaves became free by the act of the plaintiffs in voluntarily bringing them into the State of Pennsylvania.

This question depends on the law of Maryland, and not of Pennsylvania. This Court cannot go behind the *status* of these people where they escaped. We know of no law or decision of the Courts of Maryland, which treats a slave as liberated, who has been conducted by his master along the national road through

the State of Pennsylvania. On this subject, Lord Mansfield has said some very pretty things (in the case of Somerset), which are often quoted as principles of the common law. But they will perhaps be found, by examination of later cases, to be classed with rhetorical flourishes rather than legal dogmas. Since the former trial of this case, the point has been decided in the Supreme Court, as I think. But, however that may be, the point is ruled in favor of the plaintiffs, for the purposes of the present case, as we desire to have your verdict on the facts of the case, which are so much contested.

The great question, then, to which your attention will be directed, is whether the defendants, or any one of them, are guilty of harboring or concealing the fugitives as laid in the declaration.

Whether the plaintiffs could have sustained an action on the case on the mere guarantee of their rights as contained in the Constitution, we need not inquire. The action has been instituted with reference to the terms used in the Act of Congress of 1793. The fine inflicted by that act can be no longer recovered, because the Act of 1850, having changed the penalty, has thereby repealed the Act of 1793 to the extent to which it has been thus supplied. But the statute, so far as it gave an action on the case for harboring and concealing, has not been supplied or repealed.

As to the nature of the harboring and concealing (which is the substance of the complaint in this case), and which would subject the defendants to liability in this form of action, I shall repeat the observations made on a former occasion.

1st. What is meant by "*notice;*" and, 2d, what constitutes harboring.

On the first point, the Court has been relieved from much difficulty by a late case tried before Mr. Justice McLean, in Ohio; and which has been affirmed in the Supreme Court of the United States (see *Vansandt* v. *Jones*, 2d McLean, and same case, 5th Howard, 216). In that case it was decided that the word "notice," as used in this act, means knowledge; that it is not necessary that a specific written, printed, or verbal notice, from the owner be brought home to the defendant, but that it is sufficient if the evidence show that he knew the person he harbored or concealed was a fugitive from labor.

The word "harbor" is defined by lexicographers by the words, to entertain, to shelter, to secure, to secrete. It evidently has various shades of meaning not exactly expressed by any synonyme. It has been defined in Bouvier's Law Dictionary "to receive clandestinely, and without lawful authority, a person, for the purpose of concealing him, so that another, having the right to the lawful custody of such person, shall be deprived of the same." This definition is quoted in the opinion of the Court, as delivered by Mr. Justice Woodbury, in *Jones* v. *Vansandt*, 5 Howard, 227. But though the word may be used in the complex meaning there given to it, it does not follow that all these conditions are necessary elements in its definition. Receiving and entertaining a person clandestinely, and for the purpose of concealment, may well be called harboring, as the word is sometimes used. Yet one may harbor without concealing. He may afford entertainment, lodging, and shelter to vagabonds, gamblers, and thieves, without the purpose or attempt at concealment, and it may be correctly affirmed of him that he harbors them.

The Act of Congress, by using the terms "harbor and conceal," evidently assumed that the terms were not synonymous, and that there might be a harboring without concealment. The act seems to be drawn with great care and accuracy, and bears no marks of that slovenly diction which sometimes characterizes Acts of Assembly, where numerous synonymes are heaped together, and words are multiplied only to increase confusion and obscurity. But neither in legal use nor in common parlance, is the word harbor precisely defined by the words entertain or shelter. It implies impropriety in the conduct of the person giving the entertainment or shelter, in consequence of some imputation on the character of the person who receives it. An inn-keeper is said to *entertain* travellers and strangers, not to *harbor* them; but may be accused of *harboring* vagabonds, deserters, fugitives, or thieves, persons whom he ought not to *entertain*.

It is too plain for argument, that this act does not intend to make common charity a crime, or treat that man as guilty of an offence against his neighbor who merely furnishes food, lodging, or raiment

to the hungry, weary, or naked wanderer, though he be an apprentice or a slave. On the contrary, it contemplates not only an escape of the slave, but the intention of the master to reclaim him. It points out the mode in which this reclamation is to be made, and it is for an unlawful interference or hinderance of this right of reclamation, secured to the master by the Constitution and laws, that this action is given.

The harboring made criminal by this act, then, requires some other ingredient besides a mere kindness or charity rendered to the fugitive. The intention or purpose which accompanies the act must be to encourage the fugitive in his desertion of his master, to further his escape, and impede and frustrate his reclamation. "This act must evince an intention to elude the vigilance of the master, and be calculated to obtain the object." (2 McLean, 608.)

This *mala mens*, or fraudulent intent required by the act to constitute illegal harboring, is not to be measured by the religious or political notions of the accused, or the correctness or perversion of his moral perceptions. Some men may conceive it a religious duty to break the law, but the law will not receive this as an excuse.

If the defendant was connected with any society or association for the purpose of assisting fugitives from other States to escape from their masters, and, in pursuance of such a scheme, afforded this shelter and protection to the fugitive in question, he would be legally liable to the penalty of this act, however much his conscience, or that of his associates, might approve of his conduct.

The difference between the action for the penalty and the action on the case, is this: The defendants might be liable for the penalty if they illegally harbored and concealed the fugitives, even though the master may have afterwards reclaimed them.

But in an action on the case for damages, the plaintiff must show that the slaves were lost to him through the illegal interferance of the defendants, or that some other appreciable loss, injury, or damage, was suffered by him in consequence thereof. In the first case, he would recover the whole value of the slaves as damages; in the latter, only to the amount of loss or actual damage which he shows he has suffered.

If the owner of the fugitive does not think fit to pursue, in order to reclaim them, he cannot complain that those who have merely harbored them after their escape have injured him, unless he can connect such persons with the original escape of the slaves, and show that they seduced the slaves, and helped them to escape from the possession of their master. If the master had entirely abandoned the pursuit of his slaves and given up all attempts to reclaim them, before interference of the defendants, the whole value of the slaves could hardly be claimed as the measure of his damages, as their loss could not be then imputed to their harboring.

But if the owner or his agent, pursuing the fugitives for the purpose of reclamation, should trace them to the premises of a certain individual, and could trace them no farther, because they had been harbored and concealed, and carried away secretly by night, and delivered to another, who continued the same process, and the pursuit of the claimant was thus baffled, no one of those individuals thus interfering could be suffered to allege that *his* interference did not cause the loss of the fugitives, or that their value was not a proper measure of damages in an action for such harboring. If a number of persons combine together to commit a trespass or wrong, they are liable to damages to the extent of the whole injury. The injured party may recover judgment for the whole damage against each, and elect *de melioribus damnis*, as he can have but one compensation. And where a number of persons are sued for a joint trespass or tort, and the plaintiff can prove any one of them to be guilty, the jury may find the others not guilty, and assess the whole damages against that one, even though many others, known or unknown, may have combined with that one to do the act, and have not been sued. Although the plaintiff can recover but one satisfaction, the damages are indivisible, and each joint trespasser is liable for the whole.

It will be for you, gentlemen of the jury, to apply these principles to the facts of the case before you. The evidence is very contradictory. In some cases, testimony apparently conflicting may be reconciled without imputing corrupt perjury to either side.

It would be difficult, perhaps, for the most enlarged charity to do so in this case. The whole case has been argued before you with very great ability by the learned counsel, and as you are the sole judges of the facts, the Court do not think it necesary to make any remarks upon them.

If, in your judgment, the hypothesis of the defendants' counsel is supported by the evidence; if Mr. Breckbill was merely a spectator, without counsel, interference or assistance; if Mr. Weakley did not participate in the transaction at all, you should find them not guilty. If you believe, also, that Kauffman did not assist in harboring, secreting or deporting the slaves, but merely fed them out of charity, and suffered them to rest for a few hours in his barn; that they were brought there without his knowledge, consent, or approbation, and taken away without his assistance, or any act of his, to enable them to elude the pursuit of their owners, or to further their escape, your verdict should be in his favor also.

If, on the contrary, you find the hypothesis of the plaintiffs' counsel to be a true one; if, from the facts in evidence, you believe that certain persons in the region of country where the defendants reside, and including them, or any of them, were known as persons willing to assist fugitives to escape; that for this reason they were brought to the premises of Kauffman, by some person, known or unknown, who was assisting the slaves to escape; if they were received by him, harbored and secreted in his barn, then taken away by him, or by his agents or servants, after night, in order to assist them to escape, and to elude pursuit; if the slaves were thus transferred by him, with the countenance, counsel and assistance of Breckbill, to the barn of Stephen Weakley; if Weakley kept them secreted in his barn, and removed them on the following night to places unknown, and the pursuit of the owners of these slaves was thus baffled, you should find for the plaintiffs the full value of the slaves in damages, as against all the defendants, or such of them as you believe from the evidence to have had an active participation in the offence.

In fine, the burden of proof is on the plaintiffs, and, in order to support their action, you must find from the evidence—

1st. That the plaintiffs were owners of the slaves named and described in the declaration.

2d. That those slaves escaped from the State of Maryland.

3d. That they were pursued by the agent of the owners for the purpose of reclaiming them.

4th. That the defendants, or some of them, knowing them to be fugitives, harbored and concealed them, in order to further their escape and enable them to elude pursuit.

5th. And if, in consequence of such harboring, the slaves did escape, and were lost to their owners, you shall find the value of the slaves as damages, with interest, if you see fit.

You will suffer no prejudice to operate on your minds, in favor or against either of the parties, on account of any peculiar notions either you or they may entertain on the subject of slavery. You are sworn to render a true verdict. In order to do this, it must be according to the law of the land, rendering equal and exact justice to both parties.

Court of Chancery. Vermont, November, 1852.

BYRON STEVENS *v.* THE RUTLAND AND BURLINGTON RAIL-ROAD COMPANY, ET AL.

1. It is a settled principle in equity, that a majority of a joint stock association cannot use the joint property except within the scope of their business, without being liable to be restrained by injunction.
2. A corporator would be bound by a modification of a charter by legislative action, which is only an *auxiliary*, but not a *fundamental* change.
3. Where a corporation procures from the Legislature, by a supplemental act, authority to make a fundamental change in their charter, as to extend their railway to a different point, and thus really construct a new road, the rights of an individual corporator, as such, who does not assent thereto, are not thereby affected, although there be a majority vote of the corporation, accepting the act.

This is a bill preferred before the Chancellor of the third Judicial Circuit, against the Rutland and Burlington Railroad Company